



Agricultural Marketing Service

7 CFR Part 981

[Doc. No. AMS-SC-21-0089]

Almonds Grown in California; Amendments to the Marketing Order

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed Rule.

SUMMARY: This proposed rule invites comments on proposed amendments to Marketing Order No. 981, which regulates the handling of almonds grown in California. The proposed amendments would modify certain marketing order provisions to facilitate orderly administration of the program. Additionally, the proposed amendments would modernize, simplify, or align language with current industry practices and definitions, and would establish authority to borrow funds. The proposal would also establish authority for the Almond Board of California (Board) to accept advanced assessments.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202)720-8938; or via internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <https://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public.

FOR FURTHER INFORMATION CONTACT: Thomas Nalepa, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: MarketOrderComment@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California. Part 981 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Board locally administers the Order and comprises growers and handlers of almonds operating within the area of production.

Section 8c(17) of the Act (7 U.S.C 608c(17)) and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the Order through this informal rulemaking action. The Agricultural Marketing Service (AMS) will consider comments received in response to this proposed rule, and based on all the information available, will determine if the Order amendment is warranted. If AMS determines amendment of the Order is warranted, a subsequent proposed rule and notice of referendum would be issued, and producers would be allowed to vote for or against the proposed amendments. If

appropriate, AMS would then issue a final rule effectuating any amendments approved by producers in the referendum.

AMS is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing,

USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 608c(17) of the Act and the supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders depending upon the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments proposed herein are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the Order. This proposed rule encompasses a number of changes that are primarily administrative or modernizing in nature. These changes would simplify, clarify, or align Order language with current industry practices and definitions. A discussion of the potential regulatory and economic impacts on affected entities is discussed later in the “Initial Regulatory Flexibility Analysis” section of this proposed rule. The amendments would apply equally to all producers and handlers, regardless of size. The proposed amendments also have no additional impact on the reporting, record-keeping, or compliance costs of small businesses.

The Board unanimously recommended seven proposed Order amendments following deliberations at a public meeting held on August 11, 2020. The Board

submitted its formal recommendation to amend the Order through the informal rulemaking process on August 9, 2021. The proposed rule would:

- Amend the Order to modify the definitions of “Almonds” and “Shelled almonds”, and add a definition for “Almond biomass” (Proposal 1).
- Change the date utilized to determine the applicable handler volume for the purpose of tabulating handler votes in the nomination process for handler positions on the Board (Proposal 2).
- Replace obsolete references to “Control Board” with “Board” in two sections (Proposal 3).
- Simplify language pertaining to incoming quality control (Proposal 4).
- Change the date that the Board is required to submit volume regulation estimates and recommendations to the Secretary (Proposal 5).
- Remove language that distinguishes certain funds in the accounting of the Board’s operating reserve fund and sets the reserve fund limit at approximately six-months’ expenses instead of six-months’ budget (Proposal 6).
- Add authority to accept advanced assessments and to borrow funds from commercial lenders (Proposal 7).

Proposal 1 – Modification or Inclusion of Definitions for Almonds, Almond Biomass, and Shelled Almonds

Sections 981.4 and 981.6 define *Almonds* and *Shelled Almonds*, respectively, for the purposes of the Order. Specifically, as defined in the Order, “*almonds* mean (unless otherwise specified) all varieties of almonds (except bitter almonds), either shelled or unshelled, grown in the State of California, and for the purposes of research includes almond shells and hulls.” “*Shelled almonds* mean raw or roasted almonds after the shells are removed and includes blanched, diced, sliced, slivered, cut, halved, or broken almonds, or any combination thereof. Additional almond products may be included by

the Secretary from time to time upon consideration of a recommendation from the Board or other pertinent information.” This proposal would amend § 981.4 to broaden the definition of *Almonds* to include almond biomass for research purposes. This proposal would add a new section, § 981.4 (a), to specifically define *almond biomass*. Section 981.6, which defines *Shelled almonds*, would also be amended to include any form that almonds without shells might take.

As the almond industry has significantly evolved since promulgation of the Order, the versatility of almond usage has also expanded.

In the mid-1970s, the Board sought to redefine almonds to include shells and hulls. A formal rulemaking hearing covering that and other proposals took place. The initial proposal sought to redefine almonds to include hulls and shells for the purpose of § 981.41. See 40 FR 50289.

Section 981.41 authorizes projects involving production and marketing research designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of almonds. Testimony at the hearing explained that research to find new and more profitable uses for, or better methods of, handling shells and hulls should be permitted under the Order. Testimony further indicated that shells and hulls together weigh approximately three times the kernelweight of almonds. Accordingly, a sizable quantity of shells and hulls is produced annually and represents a significant economic factor. Testimony indicated that grower returns could be improved if more profitable outlets or better methods of handling can be found for shells and hulls. See 41 FR 15341.

Testimony at the hearing further indicated that the Board should not undertake any marketing promotion including advertising activity for shells and hulls. Ultimately, the definition of almonds was revised to include hulls and shells for the purposes of research. See 41 FR 26852.

This proposal would amend § 981.4 to broaden the definition of *Almonds* to include almond biomass for research purposes. This proposal would add a new section, § 981.4(a), to specifically define *almond biomass*.

In the past, biomass (hulls, shells, skins, prunings, etc.) offered limited additional value to the growers. Huller/shellers would primarily sell their hulls for feed, use the shells for bedding or power cogeneration, and burn woody biomass, such as whole trees or prunings. Now, with expanding production levels, the industry estimates that it generates over 5.6 billion pounds of hulls and shells alone each year. In addition, stricter environmental regulations have made it more difficult to dispose of organic material through burning. Consequently, the industry has devoted significant effort to identify new solutions to utilize waste material in the orchard or in other non-edible product streams.

With an increased focus on full utilization of what comes out of the almond orchard, innovative technologies and research have revealed more value-added applications for what were previously by-products with limited to no value. For example, almond skins, which are the result of blanching brownskin almonds, are being used for fiber addition, shells are incorporated into plastics using torrefaction, sugar can be extracted from hulls, and “whole orchard recycling” techniques incorporate chipped prunings and woody biomass into the soil. These new uses bring additional profitability to the grower.

Therefore, the Board recommended that the current almond definition in § 981.4 be broadened to accommodate all almond biomass, not just shells and hulls. It also recommended that the definition of almonds be further expanded to include § 981.4(a) to specifically define almond biomass as almond hulls, shells, skins, and woody biomass (i.e. trees and prunings).

During discussions regarding the definition of “almonds,” Board members noted that their research and development projects should address the entire almond category. Such efforts should encompass all aspects of almond production, going beyond almond kernels, inshell almonds, and the by-product shells and hulls. The interest in innovative applications for almond by-products and biomass utility has expanded over the years. Specifically, the Board has prioritized research of water conservation, zero orchard waste production practices, environmentally friendly pest management tools, and additional ways to reduce carbon dioxide emissions.

The Board does not intend to engage in marketing promotion or advertising of almond biomass, nor does it intend to permit any credit-back reimbursements to be applied to biomass (just as such reimbursements were never applied to shells and hulls). In its marketing promotion and advertising activity for consumable almonds, the Board would likely refer to its research efforts associated with almond biomass and its focus on sustainability and improving grower returns.

During subsequent discussions, the Board emphasized that none of the changes in definitions would impact or materially expand the Board’s authorities, nor would they expand the type of research or activities which are conducted by the Board. Rather, these changes would update the regulatory text to reflect current industry terminology and more accurately describe almond by-products that now represent additional value to the grower, which were previously viewed as waste.

Finally, to accommodate for new innovations in the almond industry, the Board recommended modifying the definition of shelled almonds in § 981.6 to include any form an almond without a shell might take, rather than specifying the exact almond form. This modification would simplify the language to provide flexibility in the event there are different forms or descriptors of almonds used in the future. The modifications to § 981.6 would strike “raw or roasted” and remove the overly prescriptive language

“blanched, diced, sliced, slivered, cut, halved, or broken almonds, or any combination thereof.”

Proposal 2 – Almond Board of California Voting Date Change

Section 981.32(b)(2) of the Order establishes the criteria for how handlers may vote for Board nominees. This proposal would amend § 981.32(b)(2) by changing the handling period date for determining a handler’s nomination weighting from December 31 to March 31 of the crop year in which the nominations are made (crop year being August 1 to the following July 31). Moving the date forward (further into the crop year) would allow for a more accurate determination of handler volume to be utilized when calculating each handler’s weighting for Board nominations.

The volume of almonds handled, as reported by the handlers, determines each handler’s weighted vote for membership on the Board. The Board issues assessment invoices to handlers four times per year on a set schedule. The Board currently uses the volume handled per the December 31 assessment invoice to establish a handler’s weighted vote. When the nominations and term of office dates were changed in the last amendment to the Order in October 2019 (84 FR 50713), it shifted the period for voting to later in the year. With the reestablishment of election dates, the Board can now utilize each handler’s March 31 assessment volume as the basis for computing handler volume for voting purposes. Moreover, as crop yields increase and deliveries of almonds from growers to handlers extend later into the crop year, using the March 31 assessment date to determine handling quantity would ensure that a larger proportion of the crop will be delivered and reported to the Board, and a more accurate estimate of handler volume may be utilized in the voting process.

This proposed date change would not impact how handler volume is calculated, nor would it have any impact on the voting process. The proposed date change would also take into consideration timing of Board meetings and election dates.

Proposal 3 – Update Language Regarding the Board

Section 981.41(b) provides authorization for the Board to recommend research, development, and marketing promotion projects. However, the existing language in § 981.41(b) refers to the Board by its former name “Control Board.” This proposal would update this section to correctly refer to the Board by its current name.

Similarly, § 981.59(a), which provides authorization for the Board to determine the reserve obligation for handlers, refers to the Board by its old name “Control Board.” The proposed action would update this section to correctly refer to the Board by its current name.

Each of the proposed changes to §§ 981.41(b) and 981.59(a) are administrative in nature and would have no impact on the Board’s activities.

Proposal 4 – Revise Language Addressing Outlets for Inedible Kernels

Section 981.42(a) requires handlers to determine, through quality control inspections performed by the inspection agency, the percentage of inedible kernels received and report the determination to the Board. Such inedible kernels shall be delivered to the Board or a Board-approved alternate outlet. The current language specifies such outlets as “crushers, feed manufacturers, or feeders” and limits the delivery of inedible kernels to the same. This proposal would change § 981.42(a) to refer to all delivery outlets approved by the Board for inedible kernels as “accepted users” and would authorize alternative outlets for such product, so long as they meet established criteria determined by the Board.

This change would broaden language related to approved outlets for inedible kernels in the incoming quality control regulations. Specifically, it would adopt the more common industry term – accepted users – to refer to the types of outlets for inedible kernels currently delineated in the Order (crushers, feed manufacturers, and feeders). The term is recognized by industry to encompass other disposition outlets not specifically

prescribed, but commonly used, such as a landfill. Using the term “accepted users” would also not limit other disposition outlets that may be utilized in the future.

Further, the term “accepted user” is utilized later in the Administrative Requirements section of the Order, so the term is understood and utilized by the Board and the industry in the administration of the Order. Section 981.442(a)(5) stipulates the requirements for handlers to meet their disposition obligation. In that section, handlers must deliver inedible product to entities “on record with the Board as accepted users.” The Board utilizes Form ABC-34, *Application to be Approved as an Accepted User of Inedible Almonds and Almond Waste*, in the approval process for accepted users. This action would harmonize § 981.41(a) with other sections of the Order and the existing administrative oversight mechanisms of the Board.

Proposal 5 – Volume Regulation Submission Date Change

Section 981.49 requires that the Board furnish to the Secretary estimates of the supply and demand for almonds, and the corresponding salable and reserve percentages to be established, by August 1 of each year that volume regulation is being considered. The estimates aid the Secretary in determining if volume regulation would tend to effectuate the policy of the Act and in fixing the appropriate salable and reserve percentages.

This proposal would change the date that such information must be furnished to the Secretary from August 1 to September 1 of each crop year. Revising the reporting date would allow for more data to be considered when making recommendations for volume regulation.

Currently, the Order specifies August 1 as the date when industry estimates and volume recommendation must be furnished to the Secretary. However, this date immediately follows the end of the crop year, and it provides little time for the Board to compile industry data and formulate recommendations for salable and reserve

percentages. In addition, data pertinent to the subject are not available until after the August 1 date. As an example, the final position report of crop year shipments and commitments is not published until the first week of August.

The current submission date also limits the time available for discussion by the Board when considering volume control recommendations. The Board normally meets in early August, after the publication of National Agricultural Statistics Service's (NASS) Objective Forecast in July and year-end crop information are available. By moving the date of notification to the Secretary to September 1, the Board would avoid having to schedule a special meeting in July to meet the Order's requirement. The September 1 date would also allow the Board's staff to complete a full analysis utilizing final crop numbers and the NASS data. As such, the proposed date change would increase the time available for Board discussions and allow for more thorough data analysis, providing greater accuracy in the calculations that might be made for the reserve recommendation. This change would have no impact on crop estimates or other Board activities.

Proposal 6 – Modification of the Accounting of Funds Held in Reserve

Section 981.81(b) stipulates authorized use and refund requirements for assessments collected but not utilized within the applicable crop year. Under the provisions in that paragraph, certain excess funds, if not expended, must be held as qualified reserve funds that may only be expended on marketing promotion expenses. Further, the paragraph refers to accounting for funds held in reserve as being segregated into separate "portions" of the reserve.

Section 981.81(c) prescribes requirements for the Board's financial reserve. Currently, the Board maintains its operating reserve in two "portions," one consisting of funds to be used for administrative-research functions and another consisting of funds to be used for marketing promotion activities. The amount in each portion is not to exceed approximately six-months' budget for the respective activity area.

The Board has found it impractical to maintain separate accounting of excess and reserve funds for administrative-research purposes and marketing promotion purposes. The Board has authority to recommend an operating budget and assessment rate each year, and it can also draw from its operating reserve to fund operations at any time during the year. Maintaining separate accounting to designate reserve funds for certain distinct purposes, however, adds administrative burden with no recognizable benefit. While the accounting scheme may have served a purpose in the past, the Board believes that it is redundant and obsolete moving forward.

This proposal would revise the Order's regulatory language in §§ 981.81(b) and 981.81(c) regarding assessment accounting procedures and processes for funds held in reserve. Both sections refer to keeping separate the funds used for administrative-research activities and funds used for marketing promotion activities. To facilitate the efficient accounting of reserve funds moving forward, this proposal would remove language in § 981.81(b) that refers to the proportional segregation of reserve funds according to their administrative-research or marketing promotion use. Similarly, this proposal would strike language in § 981.81(c) which currently specifies that the reserve fund consists of an administrative-research portion and a marketing promotion portion. It would also modify the language that limits the amount held in reserve to not exceed "approximately six-months' budget" for each activity to read "six-months' expenses", without any reference to "each activity."

The recommended changes would not impact the percentage of the assessment available for credit-back, nor would it materially impact reserves. In addition, although there would not be separate reserve accounts for different activities, the Board and USDA would continue to know how all monies are spent and to which activities they are allocated through the Board's marketing policy, budget, and other approval and oversight

mechanisms and records. This is an administrative change, clarifying in the Order language that each portion would not technically be maintained in separate accounts.

Proposal 7 – Acceptance of Advanced Assessments and Borrowing Authority

Section 981.81 authorizes the collection of assessments from almond handlers to provide funds to meet authorized Board expenses and the operating reserve requirements. This proposal would create a new § 981.81(f) to authorize the Board to accept advance payments of assessments and to borrow funds from commercial lending institutions to better ensure continuity in operations during periods when neither operating assessments nor reserve funds are sufficient to fund Board functions.

As almond tonnage and assessment revenue have increased since the Order's promulgation, the industry has approved increasingly larger budgets which have year-round financial commitments. However, growers do not necessarily deliver the entire assessable crop at one time, nor do handlers have the facilities to process the entire crop at one time, and handlers instead purchase and market almonds throughout the production cycle. As a result, only about 17 percent of assessment revenue is paid to the Board when the first crop year assessment invoice is sent to handlers in October. Consequently, the Board invoices for assessments in the second and third quarters of the crop year. Yet, many research activities and marketing programs are initiated early in the crop year, necessitating payment when services are performed, often well before the first assessments are received from October invoices. Although the Board currently maintains a reserve fund to help pay for early expenses, this fund is insufficient to advance some of the necessary payments. Authorizing the Board to accept advance assessment payments and to borrow from commercial lending institutions would help it manage and sustain program activities during times of cash flow deficiencies.

Board members further noted that the ability to borrow against a line of credit is a common tool authorized in other federal marketing orders, especially to accommodate

expenses when the assessment revenue necessary to pay such expenses is not received until later in the year.

While addressing general business concerns about the potential risks associated with debt financing, the Board agreed that its internal control policies would be revised to reflect the new borrowing authorities. Notably, the Board stressed that these policies would include financing procedures that would require any borrowing by the Board to be reimbursed upon receipt of sufficient assessment revenue. Moreover, Board members stressed that any borrowing of funds would be short-term in nature, limited, and would not extend beyond the end of the crop year.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 7,600 almond growers in the production area and approximately 100 handlers subject to regulation under the Order. Small agricultural almond producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$3,250,000, and small agricultural service firms are defined as those having annual receipts of less than \$30,000,000 (13 CFR 121.201). The National Agricultural Statistics Service (NASS) reported in its 2017 Census of Agriculture (Census) that there were 7,611 almond farms in the production area, of which 6,683 had bearing acres. Additionally, the Census indicates that out of the 6,683

California farms with bearing acres of almonds, 4,425 (66 percent) have fewer than 100 bearing acres.

In another publication, NASS reported a 2021 crop year average yield of 2,210 pounds per acre and a season average grower price of \$1.76 per pound. Therefore, a 100-acre farm with an average yield of 2,210 pounds per acre would produce about 221,000 pounds of almonds (2,210 pounds times 100 acres equals 221,000 pounds). At \$1.76 per pound, that farm's production would be valued at \$388,960 (221,000 pounds times \$1.76 per pound equals \$388,960). Since the Census indicated that 66 percent of California's almond farms are less than 100 acres, it could be concluded that the majority of California almond growers had annual receipts from the sale of almonds of less than \$388,960 for the 2020-21 crop year, which is below the SBA threshold of \$3,250,000 for small producers. Therefore, the majority of growers may be classified as small businesses.

To estimate the proportion of almond handlers that would be considered small businesses, it was assumed that the unit value per pound of almonds exported in a particular year could serve as a representative almond price at the handler level. A unit value for a commodity is the value of exports divided by the quantity exported. Data from the Global Agricultural Trade System (GATS) database of USDA's Foreign Agricultural Service showed that the value of almond exports from August 2020 to July 2021 (combining shelled and inshell) was \$4.647 billion. The quantity of almond exports over that time-period was 2.162 billion pounds. Dividing the export value by the quantity yields a unit value of \$2.15 per pound (\$4.647 billion divided by 2.162 billion pounds equals \$2.15).

NASS estimated that the California almond industry produced 2.915 billion pounds of almonds in 2021. Applying the \$2.15 derived representative handler price per pound to total industry production results in an estimated total revenue at the handler

level of \$6.267 billion (2.915 billion pounds X \$2.15 per pound). With an estimated 100 handlers in the California almond industry, average revenue per handler would be approximately \$62.67 million (\$6.267 billion divided by 100). Assuming a normal distribution of revenues, most almond handlers shipped almonds valued at more than \$30,000,000 during the 2020-21 crop year. Therefore, the majority of handlers may be classified as large businesses.

This proposed rule would revise multiple provisions in the Order's subpart regulating handling of California almonds. The proposed rule would:

- Amend the Order to modify the definitions of "Almonds" and "Shelled almonds", and add a definition for "Almond biomass" (Proposal 1).
- Change the date utilized to determine the applicable handler volume for the purpose of tabulating handler votes in the nomination process for handler positions on the Board (Proposal 2).
- Replace obsolete references to "Control Board" with "Board" in two sections (Proposal 3).
- Simplify language pertaining to incoming quality control (Proposal 4).
- Change the date that the Board is required to submit volume regulation estimates and recommendations to the Secretary (Proposal 5).
- Remove language that distinguishes certain funds in the accounting of the Board's operating reserve fund and set the reserve fund limit at approximately six-months' expenses instead of six-months' budget (Proposal 6).
- Add authority to accept advanced assessments and to borrow funds from commercial lenders (Proposal 7).

Proposals 1, 3, and 4 are modernizing in nature and align Order provisions with current industry definitions and practices in §§ 981.4, 981.6, 981.41(b), and 981.59(a).

Proposal 1 would also add § 981.4(a) to define *Almond Biomass* and simplify language in

§ 981.42(a) to identify disposition outlets more broadly as *Accepted Users*. There are no substantial changes or additional requirements to industry practices effectuated as a result of these proposed amendments.

Proposals 2 and 5 would adjust or align dates to allow for the inclusion of more available data when determining weighting of handler votes for Board nominations (§ 981.32(b)(2)) and providing volume regulation recommendations to the Secretary (§ 981.49). These changes would not impact how volume is calculated for handler vote weighting, materially affect crop estimates, or adversely impact Board activities.

Proposal 6 would remove language that distinguishes between funds for administrative-research and funds for marketing promotion activities in the accounting of excess funds (§ 981.81(b) and (c)). In addition, it would set the reserve fund limit at approximately six-months' expenses instead of the current six-months' budget. This is an administrative adjustment that provides technical clarification on the accounting of assessments and reserves. It does not impact the percentage of assessments available for refund, nor does it materially impact reserves.

Proposal 7 would add a new section, § 981.81(f), to allow the Board to accept advance payment of assessments and borrow funds against the current season's assessment receipts using a line of credit from a commercial financial institution to provide additional flexibility in managing its cashflows and expenses.

This proposed rule encompasses a number of changes that are primarily administrative or modernizing in nature. These changes would simplify, clarify, or align Order language with current industry practices and definitions, and include a common authority to borrow funds. The amendments would apply equally to all producers and handlers, regardless of size. The proposed amendments also have no additional impact on the reporting, record-keeping, or compliance costs of small businesses. Proposal 7 would authorize the Board to receive advance assessment payments and borrow funds.

These authorities are necessary to ensure that adequate funds are available throughout the year to pay the Board's management and administrative expenses. Any borrowing or interest costs associated with the borrowing provision in the proposed rule would be calculated and accounted for within the Board's annual budget.

Alternatives to this proposed rule were considered, including making no changes at this time. However, the Board believes it would be beneficial to update Order language to better reflect the current state of the almond industry and the industry's vernacular, and to have the means and funds necessary to effectively administer the program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements are necessary because of this proposed action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed action.

The Board's meetings are widely publicized throughout the California almond production area. All interested persons are invited to attend the meeting and encouraged

to participate in Board deliberations on all issues. Like all Board meetings, the meetings held on December 9, 2019; August 11, 2020; and December 7, 2020, were public, and all entities, both large and small, were encouraged to express their views on the proposals.

Interested persons are invited to submit comments on the proposed amendments to the Order, including comments on the regulatory and information collection impacts of this proposed action on small businesses.

Following analysis of any comments received on the amendments in this proposed rule, AMS will evaluate all available information and determine whether to proceed. If appropriate, a proposed rule and notice of referendum would be issued, and producers would be provided the opportunity to vote for or against the proposed amendments. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the **Federal Register**. If appropriate, a final rule would then be issued to effectuate any amendments favored by producers participating in the referendum.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of Marketing Order 981; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. Marketing Order 981 as hereby proposed to be amended and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. Marketing Order 981 as hereby proposed to be amended regulates the handling of almonds grown in California and is applicable only to persons in the respective classes of commercial and industrial activity specified in the Order;

3. Marketing Order 981 as hereby proposed to be amended is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. Marketing Order 981 as hereby proposed to be amended prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of almonds produced or packed in the production area; and

5. All handling of almonds grown or handled in the production area, as defined in Marketing Order 981 is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 60-day comment period is provided to allow interested persons to respond to these proposals. Any comments received on the amendments proposed in this rule will be analyzed, and if AMS determines to proceed based on all the information presented, a producer referendum would be conducted to determine producer support for the proposed amendments. If appropriate, a final rule would then be issued to effectuate the amendments favored by producers participating in the referendum.

List of Subjects in 7 CFR Part 981

Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 981 as follows:

PART 981 – ALMONDS GROWN IN CALIFORNIA.

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise § 981.4 to read as follows:

§ 981.4 Almonds.

Almonds means (unless otherwise specified) all varieties of almonds (except bitter almonds), either shelled or unshelled, grown in the State of California, and, for the purposes of research includes almond biomass.

3. Add § 981.4a to read as follows:

§ 981.4a Almond Biomass.

Almond Biomass means the hulls, shells, and skins of harvested almonds and woody biomass derived from almond trees (e.g. tree limbs, bark, prunings).

4. In § 981.6 revise the first sentence to read as follows:

§ 981.6 Shelled almonds.

Shelled almonds mean almonds after the shells are removed and includes any form those almonds might take. * * *

5. Revise § 981.32 paragraph (b)(2) to read as follows:

§ 981.32 Nominations.

* * * * *

(b) * * *

(2) Each handler may vote for a nominee for each position representing the group to which the handler belongs. Each handler vote shall be weighted by the quantity of almonds (kernel weight basis computed to the nearest whole ton) handled for the handler's own account through March 31 of the crop year in which nominations are

made. The nominee for each position shall be the person receiving the highest weighted vote for the position.

* * * * *

§ 981.41 [Amended]

6. In § 981.41 paragraph (b) remove the word “Control”.

§ 981.42 [Amended]

7. In § 981.42 paragraph (a) the second sentence, removing the words “accepted crushers, feed manufacturers, or feeders” and adding, in their place the words “approved accepted users.”

§ 981.49 [Amended]

8. In § 981.49, in the introductory text removing the word “August” and adding in its place the word “September”.

§ 981.59 [Amended]

9. In § 981.59 paragraph (a), remove the word “Control”.

10. Amend § 981.81 by:

- a. Revising the third and fourth sentences in paragraph (b);
- b. Revising paragraph (c); and
- c. Adding paragraph (f).

The revisions and addition read as follows:

§ 981.81 Assessment.

* * * * *

(b) * * * Any amounts, not credited pursuant to §981.41 for a crop year may be used by the Board for its marketing promotion expenses of the succeeding crop year, and any unexpended portion of those amounts at the end of that crop year shall be retained in the operating reserve fund. Any funds of the operating reserve fund in excess of the level authorized pursuant to paragraph (c) of this section shall be refunded to handlers or used

to reduce the assessment rate of the subsequent crop year, as the Board may determine. *

* *

(c) *Reserves.* The Board may maintain an operating reserve fund which shall not exceed approximately six-months' expenses or such lower amount as the Board may establish with the approval of the Secretary: *Provided*, That this limitation shall not restrict the temporary retention of excess funds for the purpose of stabilizing or reducing the assessment rate of a crop year. To the extent that funds from current crop year assessments are inadequate, funds in the operating reserve may be used for the authorized activities of the crop year. Funds so used, and not exceeding the six-month limitation, shall be replaced to the extent practicable from assessments subsequently collected for the crop year.

* * * * *

(f) *Advanced Assessments and Commercial Loans.* To provide funds for the administration of the programs during the part of a crop year when neither sufficient operating reserve funds nor sufficient revenue from assessment on the current season's receipts are available, the Board may accept payment of handler assessments in advance of the date when due or may borrow funds from a commercial lending institution for such purposes.

Erin Morris,

Associate Administrator.

Agricultural Marketing Service.

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